Docket No.: 4614-0160PUS1

(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Marc DONATH

Patent No.: 7,572,770 B2

Confirmation No.: 5584

Filed: September 1, 2005

Art Unit: 1647

For: USE OF AN INTERLEUKIN 1 RECEPTOR

ANTAGONIST AND/OR

PYRROLIDINEDITHIOCARBAMATE FOR THE TREATMENT OR PROPHYLAXIS OF

TYPE 2 DIABETES

Examiner: I. D. Dang

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705 (d)

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Pursuant to CFR § 1.705 (d), the Patentee hereby requests reconsideration of the patent term adjustment indicated on the Issue Notification for Patent No. 7,572,770 B2 (Exhibit 1). Specifically, while the Issue Notification indicates a patent term adjustment of 219 days, Patentee submits that the patent term adjustment should correctly be 317 days.

STATEMENT OF FACTS

- 1. The Issue Notification issued in this case on July 22, 2009 indicated that the Patent Term Adjustment was 219 days, (see Exhibit 1).
- 2. However, in accordance with the recent District Court decision in *Wyeth et al. v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), the correct Patent Term Adjustment should be 98 days of prosecution delay, <u>plus</u> 344 days for the failure of the USPTO to issue

Application No.: 10/517,450 Docket No.: 4614-0160PUS1

a patent within three (3) years of the actual filing date of the application (37 C.F.R. § 1.702(b)), minus 125 days of applicant delays, <u>for a total of 317 days</u> of Patent Term Adjustment.

3. Accordingly, Patentee hereby requests that the U. S. Patent and Trademark Office correct the calculation of the Patent Term Adjustment for the above-identified patent to <u>317 days</u>.

COMPLIANCE WITH REQUIREMENTS OF 37 CFR § 1.705 (b)(1) AND (2)

- 4. A statement of facts is presented above, detailing the relevant dates and the correct patent term adjustment.
- 5. The present patent is not subject to any Terminal Disclaimer or any expiration date specified in a Terminal Disclaimer (§ 1.705(b)(2)(iii)).
- 6. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified application (§ 1.705(iv)(B)).

CONCLUSION

The USPTO is requested to correctly indicate that Patent No. 7,572,770 B2 is entitled to <u>317 days</u> of Patent term Adjustment.

PAYMENT OF FEES

As set forth in the attached Fee Transmittal, the Commissioner is hereby authorized to charge the amount of \$200.00 to Deposit Account No. 02-2448 for the consideration of this Request as required by 37 C.F.R. § 1.18(e).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required.

Dated:

OCT 1 3 2009

Respectfully submitted

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Attachment

Exhibit 1 – Issue Notification